
IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ELIZABETH DECKER,

Appellant,

vs.

THE PACIFIC COAST STEAMSHIP COM-

PANY, a Corporation,

Appellée.

No. 1564

PETITION FOR REHEARING

E. M. BARNES,
Attorney for Appellant.

FILED

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To the Honorable Judges of the above entitled Court:

Comes now the above named appellant and most respectfully petitions the Court that the opinion and judgment herein may be set aside and a rehearing granted for the reasons of manifest error and mistake in considering the facts herein as the same appear to the appellant, and the appellant most respectfully in that behalf represents to this Honorable Court that:

On page 8 of the said opinion this Honorable Court says, in referring to the case of McCloskey vs. Pacific Coast Company, 160 Fed. 164: "The court upon the evidence of the dedication and grant by deed of the strip of land for a sidewalk and

street along the water front of plaintiff's premises, held that the plaintiffs had by dedication and deed parted with all its litoral rights." Appellant respectfully submits that at the time of the making of the deed, February 20, 1897, she had no litoral rights and as it appears to appellant there is neither allegation, evidence of, or finding that appellant was at that time a litoral proprietor save and except in inference to be drawn from this Honorable Court's opinion on page 9 thereof.

As appears to appellant the evidence is undisputed that at the time of the making of the deed, February 20, 1897, Franklin street was between Blocks K and L and the shore of Gasteau Channel; vide Deed p. 56 of Record, lines 6, 7 and 8; Deed page 65 of Record, last paragraph; Map page 68 of Record.

This Honorable Court on page 9 of its opinion says: "We are of the opinion that whatever appellant's rights may have been as to the ownership of land abutting on navigable waters, she parted with such rights in the deed of February 20, 1897, and the appellants, lessor, has succeeded to said rights."

Appellant respectfully submits that she was not a litoral proprietor at the time of the making of the deed.

Citations above noted.

The judgment of this Honorable Court, being based on the ^{accept} fact that appellant was, at the time of making the deed, February 20, 1891, a litoral proprietor, is it not axiomatic if she was not then a litoral proprietor, that under this Honorable Court's own decision herein cited, McCloskey vs. Pa-

cific Coast Company, this judgment should be set aside?

The only evidence of her being a litoral proprietor is at the time of the commencement of this action:

Vide: Allegation 10, p. 3 Record, which allegation is not denied.

Vide: Trial court's finding, lines 12-14, p. 30 Record.

This Honorable Court on page 7 of its opinion says: "It is contended by the appellant that the evidence relating to this deed was incompetent and should have been excluded on the ground that Congress alone had the power to make grants below high water mark in the Territory of Alaska. Appellant also objected on the further ground: "it appears from a perusal of the deed that Franklin street was between the land owned by the grantors and ordinary high tide and therefore the grantors had no litoral rights to convey." Record, pp. 53-54.

This Honorable Court on p. 7 of its opinion says: "But it cannot be ascertained from the allegations in the complaint in this case * * * in what manner the maintainance of the buildings and wharf by the appellee in front of her premises prevents her from having access to the navigable water of Gastineau Channel."

"That said buildings are known as the Union Iron Works and the said wharf is between them and deep water." — — Allegation IX. Plaintiff's Complaint Record, pp. 4-5; and this allegation is not denied.

Appellant suggests this Honorable Court should take judicial notice that buildings used as iron works are not "suitable

structures for the accommodations of the public in the discharge and shipment of passengers and merchandise arriving and departing by water at the port of Juneau.”

The last quotation is from lines 9 to 12 of page 7 of this Honorable Court's opinion. To appellant it being manifest that mistake of facts have been made by this Honorable Court as above specified she respectfully asks a rehearing herein and that she may be permitted to make a re-argument herein and to file further briefs herein.

Respectfully submitted,

E. M. BARNES,

Attorney for Appellant.

I hereby certify that in my opinion the above petition for rehearing is well founded and I further certify that it is not interposed for delay.

E. M. BARNES,

Attorney for Appellant.

Dated. Juneau, Alaska. November 7, 1908.